

REMARKS

Applicant appreciates the time taken by the Examiner to review Applicant's present application. This application has been carefully reviewed in light of the Official Action mailed April 3, 2007. Applicant has amended Claims 1, 18, 27, 28, 48 and 52 and cancelled Claim 56. Thus, Claims 1, 18, 25-28 and 44-55 remain pending. Applicant respectfully requests reconsideration and favorable action in this case.

Claim Objections

Claims 18, 27, 28 and 56 were objected to by the Examiner. Applicant has amended Claims 18, 27, 28 and 56 and respectfully submits that this objection is now moot.

Rejections under 35 U.S.C. § 101

Claims 28, 48, and 52 stand rejected under 35 U.S.C. § 101. Applicant has amended Claims 28, 48 and 52. Applicant respectfully submits that this rejection is now moot.

Rejections under 35 U.S.C. § 102

Claims 1, 18, 25-28 and 44-56 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,937,639 ("Pendergrass"). Applicant respectfully traverses this rejection.

As noted by the Examiner in the Official Action this rejection under 35 U.S.C. 102(e) might be overcome by a showing under 37 C.F.R. 1.132 that the claimed embodiments of the invention of the present application are not by another with respect to the Pendergrass reference.

To that end Applicant has enclosed a declaration under 37 C.F.R. 1.132 by Marcus Pendergrass an inventor of both the embodiments of the invention described and claimed in the present application and the invention described and claimed in the Pendergrass reference. See Declaration Under 37 C.F.R. 1.132 included here as Exhibit A (the "Pendergrass Declaration") ¶¶ 1-6.

As can be seen from a review of the Pendergrass Declaration, Marcus Pendergrass is an inventor of both the invention described and claimed in present application and the cited

Pendergrass reference and thus the Pendergrass reference is not "by another" as required by 35 U.S.C. § 102(e). Accordingly, Applicant respectfully submits that the Pendergrass reference cannot be used to reject the claims of the instant application under U.S.C. § 102(e) and respectfully requests the withdrawal of the rejection of Claims 1, 18, 25-28 and 44-56.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for allowance. Other than as explicitly set forth above, this reply does not include an acquiescence to statements, assertions, assumptions, conclusions, or any combination thereof in the Office Action. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests full allowance of Claims 1, 18, 25-28 and 44-55. The Examiner is invited to telephone the undersigned at the number listed below for prompt action in the event any issues remain.

An extension of 3 months is requested and a Notification of Extension of Time Under 37 C.F.R. § 1.136 with the appropriate fee is enclosed herewith.

The Director of the U.S. Patent and Trademark Office is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 50-3183 of Sprinkle IP Law Group.

Respectfully submitted,

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